NOORIANTI ZAINOL ABIDIN & ORS.

v.

TANG LEI NGE

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[SUIT NO. P386 OF 1983]
1 DECEMBER 1989

TORT: *Damages - Running down - Assessment of evidence as to which party was liable - Assessment of living expenses for claim under loss years.*

A road accident occurred on 18 January 1980 at about 6.00 a.m. between a Toyota and a Mercedes. The driver and the 2 passengers in the Toyota were killed as a result of the accident and the plaintiffs brought this action for damages for the benefits of the estate of the deceased under s. 8 of the Civil Law Act. The defendant was the driver of the Mercedes and DW2 was his passenger.

The investigating officer was called as a witness for the plaintiffs. He gave evidence of the following:

(a) the Toyota was travelling from Ipoh to KL and the Mercedes was travelling in the opposite direction;

(b) the material stretch of road was straight and there was no potholes or obstacles - there was a small bridge near the scene of the accident;

(c) when he arrived at the scene of the accident the Mercedes was lying in a drain running along side-table of the right half of the road as one faces Ipoh and the Toyota was straddling part of the right half of the road and the sidetable adjoining the road and it was facing Kuala Lumpur;

(d) there was glass splinters from both cars scattered all over the right half of the road and the adjoining sidetable;

(e) there were 2 brake marks commencing from the right half of the road to the drain where the Mercedes had landed - there was no brake marks made by the Toyota;

(f) photographs and other reports show that the front parts of both cars were badly damaged.

The defendant and DW2 were the only eye-witnesses. The defendant in his evidence said that when the Toyota was about half a mile ahead of his Mercedes, the Toyota started encroaching on to his side of the road and travelled on his side-table when he moved to the centre of the road. At this point the Toyota came out and knocked into the front of the Mercedes. He swerved his car to the right into the drain and then he and DW2 got out of the car before it caught fire. DW2 said the same thing.

In submission, Counsel for the defendant suggested that the driver of the Toyota had fallen asleep and that he had suddenly awakened when he found out that he was on the sidetable and dashed out onto the road and thus collided with the Mercedes.

Held:

[1] In evaluating evidence given by witnesses, the fact that a party is unshaken or unbroken is not *per se* an all sufficient acid test of credibility and the inherent probability or improbability of the fact in issue must be the prime consideration.

[2] A trial Judge should not approach the case of the basis of deciding which is the 2 conflicting stories that he should believe but rather on the basis of considering which version is inherently probable or improbable.

[3] If the driver of the Toyota was asleep the Toyota would have plunged into the stream or the drain before the accident could happen.

[4] It is improbable that the Toyota would have purposely gone unto the road from the sidetable if the Mercedes was approaching.

[5] The defendant's version of the accident would have only happened if all persons in the Toyota were asleep.

[6] The evidence showed a head-on collision.

[7] The glass splinters (on the right side of the road), the brake marks of the Mercedes (from the right side of the road) and the position of the Toyota facing Kuala Lumpur shows that the collision was caused by the Mercedes encroaching onto the path of the Toyota and that the defendant is wholly liable for the accident.

[8] The position of the cars after a collision is no proof of their positions at the time of the collision.

[9] The defendant's failure to state in his police report (made 4 hours after the accident) of how the Toyota had travelled on the sidetable and thereafter moved to the centre of the road thus causing the collision cannot be ignored in the evaluation of his evidence.

[10] Not much value can be given of DW2's evidence as from the quality of the same and the manner is which it was given (exact details of an occurrence 9 years ago) it appears that the two witnesses for the defence had an understanding of sorts resulting in DW2 repeating the defendant's assertions verbatim.

[11] A claim for damages for loss years can only succeed if the following conditions have been satisfactorily established:

(a) there must be evidence before the Court of the pre-accident income of the deceased; and

(b) from his income there must be a sum which the deceased would have been able to save after deduction of his probable living expenses.

[12] There is evidence of the monthly income of the deceaseds and evidence of sums given by the deceaseds each month to their dependants and the amount they paid for rent.

[13] The assessment of living expenses may be difficult but not insuperable for the Courts to resolve.

[14] The ingredients that go to make up living expenses are the same whether the victim is young or old, single or married with or without dependants. The sum to be deducted as living expenses is the proportion of the victim's net earnings which he spends to maintain

himself at the standard of life appropriate to his case and any sums expended to maintain for the benefit of others do not form part of the victim's living expenses and are not deductable from the net earnings.

[15] The first deceased was earning RM1,055 a month and from his modest style of living a sum of RM400 would be his living expenses - this leaves a sum of RM655 which is rounded up to RM600 x 11 years purchase. Under the annuity table the sum awarded shall be RM59,807 (round figure).

[16] The second deceased was earning RM502 a month and from his modest style of living a sum of RM250 would be his living expenses - this leaves a sum of RM250 (rounded up) x 16 years purchase. Under the annuity table the sum awarded shall be RM32,513 (round figure).

[17] The third deceased was earning RM680 a month and from his modest style of living but taking into account a higher sum for entertainment and social activities as he was a bachelor a sum of RM380 would be his living expenses - this leaves a sum of RM400 x 15 years purchase. Under the annuity table the sum awarded shall be RM49,822 (round figure).

[18] A sum of RM5,000 would be awarded for loss of expectation of life for each deceased.

[19] Special damages of RM1,250 each for each deceased.

[Order accordingly.]

Cases referred to:
Muniandy & Ors. v. PP [1966] 1 MLJ 257
Dato Mokhtar bin Hashim v. PP [1983] CLJ (Rep) 101
PP v. Neoh Wan Kee [1985] 1 MLJ 368
Kong Teik Choo & Ors. v. Reg. [1956] MLJ 52
Yeoh Cheng Han v. Official Administrator [1972] 2 MLJ
Pickett v. British Rail Engineering Ltd. [1979] 1 All ER 774
Thangavelu v. Chia Kok Bin [1981] CLJ (Rep) 281
Low Kok Tong v. Teo Chan Pan [1982] CLJ (Rep) 869
Chan Heng Wah v. Peh Thiam Choh [1988] 1 MLJ 74
Gammell v. Wilson [1982] AC 27
Harris v. Empress Motors Ltd. [1984] 1 WLR 212

Legislation referred to:
Civil Law Act 1956, ss. 7, 8

For the plaintiffs - G. Rethinasamy; M/s. Rethina & Co.
For the defendant - Harjeet Singh; M/s. Shearn Delamore & Co., and Drew & Napier

JUDGMENT

Lim Beng Choon J:

A motor accident occurred at about 6.00a.m. on 18 January 1980 along the Kuala Lumpur/ Ipoh trunk road at or near to Kalumpang. As a result of the accident the driver and the two passengers of one of the vehicles involved in the accident, a Toyota Corolla bearing registration No. PQ 9782 ("the Toyota car") sustained severe injuries and they succumbed to the injuries at the District Hospital Tanjong Malim. The driver of the Toyota car was Ahmad bin Jai and the two passengers were Zainol Abidin bin Pandak Audin and Abu Bakar bin Chin. The other vehicle involved in the accident, a Mercedes car bearing registration No. WP 4380, was driven by the defendant and there was a passenger in that car, one Wong Kee Nam.

The present action was brought by the respective administrator and administratrix of the estates of the deceased persons for the recovery of damages for the benefit of the said estates, pursuant to s. 8 of the Civil Law Act 1956 prior to the amendments made to it on 1 October 1984.

As the only living witnesses to the accident were the defendant and Wong Kee Nam who was called to testify for the defence, the plaintiffs could only call the officer-in-charge of the investigations of the accident Inspector Zainol Abidin bin Mohd. Sa'ad (PW5) to testify for the plaintiffs' case.

According to PW5, he was the first person to arrive at the scene about one hour after the accident. He drew a sketch plan, a copy of which was produced by him at the trial since the photostat copy of the same included in the bundle of agreed documents Exhibit 'A' is not legible. The sketch plan shows, among other things, that:

(a) the Mercedes car was in a drain running along the sidetable of the right half of the road as one faces towards Ipoh;

(b) the Toyota car was straddling part of the right half of the road and the sidetable adjoining the road and it was facing towards Kuala Lumpur;

(c) there were glass splinters scattered all over the right half of the road and the adjoining sidetable;

(d) there were two brake marks commencing from the right half of the road to the drain where the Mercedes car had landed.

From his investigations, PW5 said that at the material time the Toyota car was travelling from Ipoh to Kuala Lumpur while the Mercedes car was travelling in the opposite direction and proceeding to Ipoh. That stretch of road where the accident took place was quite straight and there were no obstacles or potholes on the road. He drew the sketch plan in accordance with what he saw at the scene upon his arrival there. He said that the glass splinters came from both the vehicles involved in the accident. He could not find any brake marks made by the Toyota car. He knew that the driver of the Mercedes car was charged for a driving offence relating to the accident but he was however given a discharge not amounting to an acquittal.

This witness also produced:

(i) a chemist's report.

(ii) two RIMV reports pertaining to the damages sustained by the Toyota car and the Mercedes car respectively.

Counsel acting for the plaintiffs and the defendant agreed to include the aforesaid documents in Exhibit 'A'. The RIMV report of the Toyota car shows that the front part of the car was very badly damaged. The RIMV report of the Mercedes car likewise shows that its front part was also damaged. The extent of the damage of the front part of the Mercedes car as described in the said RIMV report is as follows:

1. Keadaan kereta keseluruhannya hangus oleh kebakaran.

2. Badan hadapan sebelah kanan remuk ke dalam.

3. Madgad hadapan sebelah kiri dan kanan remuk.

The chemist's report said that the damage to the front of the Mercedes car was due to a collision prior to the fire. It was also found that the front of the Toyota car was badly damaged.

Photographs of the damaged vehicles also confirmed that the front parts of both the vehicles were badly damaged.

The defendant in his evidence said that he woke up at 3.00a.m. on the morning of 18 January 1980 as he had arranged with his friend, Wong Kee Nam, to go to Ipoh. He left his house at 4.00a.m. to drive to Wong's house at Sungei Buloh. From there he and his friend who sat beside him proceeded to Serendah where they had a drink. Thereafter they proceeded along the KL/Ipoh trunk road. When they were about to reach Kalumpang he saw a car coming from the opposite direction. The said car was about one mile away. When it was about half a mile in front of him, the said car encroached on to his path and continued to travel to the sidetable on his side of the road. After the said car had gone on to the sidetable, it continued to proceed along the sidetable. The defendant thereupon moved his Mercedes car near to the centre of the road. When he was about to pass the said car, it suddenly came out from the sidetable and knocked against the Mercedes car. The point of collision was on the front part of the Mercedes car. He then swerved his car to the right. He shut his eyes and upon opening his eyes he found that his car had landed in a drain. It was on fire and he managed to get out with his friend before his car exploded and became engulfed in flames. He lodged a report at the Kalumpang Police Station at about 10.50a.m. the same morning and his report was enclosed at p. 19 of Exhibit A. He also said that he had been a driving instructor for over 10 years prior to the accident. Finally he said that although his car was insured against accident his insurers had discharged themselves. His Counsel informed this Court that the insurers of the Mercedes car, Supreme QB Insurance Company had already been wound up and they were not interested in defending this case.

Wong Kee Nam, DW2, in his evidence, said almost the same thing in his description of how the accident occured.

It is useful to pause here for a moment to say a few words regarding the approach which a trial Judge should adopt in evaluating the evidence adduced at a trial. It has been stated in numerous cases that the fact that the evidence given by the witnesses of one party was unshaken or unbroken is not *per se* an all sufficient acid test of credibility and that the inherent probability or improbability of the fact in issue must be the prime consideration - see for instance *Muniandy & Ors. v. PP* [1966] 1 MLJ 257, *Dato Mokhtar bin Hashim v. PP* [1983] CLJ (Rep) 101 and *PP v. Neoh Wan Kee* [1985] 1 MLJ 368 at p. 372. It has also been said that a trial Judge should not approach the case upon the basis of deciding which of the two conflicting stories he should believe but rather on the basis of considering which version is inherently probable or improbable - see for instance *Koay Teik Choo & Ors. v. Reg.* [1956] MLJ 52. With these principles in mind I shall now assess the evidence in the present case.

Now it has been suggested that the driver of the Toyota car must have fallen asleep, unconsciously veered his car on to the path of the defendant went on to the sidetable and slowly proceeded along the sidetable before it suddenly dashed out to collide with the defendant's Mercedes. It is to be noted that there was a small bridge (jambatan) marked with the letter "K" in the sketch plan leading from the edge of the sidetable marked with the letter "A" to the kampong beyond. This indicates that there was either a small stream, or a drain running alongside the sidetable. If the driver of the Toyota car was sound asleep and

unconciously veered his car to his right he would have more probable than not plunged into the stream or the drain; it is inherently incredible that he would be able to get on to the sidetable and continue to proceed slowly along it for some time before dashing out to collide with the Mercedes car. Another argument that might have been but was not put forward is that the driver of the Toyota car might have been awakened upon reaching the sidetable and he could therefore stabilise his car and proceed slowly along the sidetable. If that be the case it is equally incredible that he would be so foolhardy as to dash out from the sidetable since he would have seen the Mercedes car with its flashing lights and headlights on quite clearly at the material time.

In the second place apart from the driver there were two passengers in the Toyota car. The version of the defence could only happen if all the three persons were asleep because if any one of the two passengers was awake he would have alerted the sleeping driver to stabilise the car in time to avoid its encroachment on to the wrong side of the road. Even assuming that the fully awake passenger could not alert the sleeping driver in time to prevent the encroachment the collision could only have occured on the left half of the road as one faces the direction of Ipoh.

In the third place the damages sustained by both vehicles strongly supported that there was a head-on collision between the two vehicles. PW5 who was in charge of the investigation said so in his evidence. The chemist in his report also said the same thing.

Finally from the sketch plan one can discern that the glass splinters were strewn on the right half of the road. The brake marks of the Mercedes car also commenced on the right half of the road and stretched over a distance of some 37 to 40 feet. More importantly the Toyota car was found lying on its correct side of the road and facing the direction of Kuala Lumpur. All these clearly show that the head-on collision was caused by the defendant's car encroaching on to the path of the driver of the Toyota car. The Counsel for the defence contended that the position of the Toyota car as shown in the sketch plan could afford absolutely no proof as to its position on the road immediately before or at the moment of the collision. He relied on the case of *Yeoh Cheng Han v. Official Administrator* [1972] 2 MLJ and the Federal Court case of *Foong Nan v. Sagadevan* [1971] to support his contention. Now let us see what the learned Judge in the *Yeoh Cheng Han* case has to say. The relevant passage appears in p. 9 of the reported case and it reads:

> It is to be observed that there was no evidence that the plaintiff went to the wrong side and knocked into the deceased. It was never put to him in cross-examination that he had done so. It is true that both vehicles were found on the wrong side but, as has been said in these Courts again and again, the position of the vehicles after the accident can afford absolutely no proof as to their respective positions on the road immediately before or at the moment of collision, **unless there is the clearest evidence to show that the vehicles involved in the accident stopped dead upon impact;** and there was no evidence to that effect in the present case. As to the broken pieces of lamp glass, there was no evidence to show whether the lamp was shattered on impact or after the vehicle had fallen. (Emphasis is mine)

The Federal Court in *Foong Nan* held the same view when it says at p. 25 of the related case:

> I regret to say that I do not think such a conclusion is substainable for the reasons given. In my view the position of the vehicles after the accident can afford absolutely no clue, **in this case,** to their respective positions on the road immediately before or at the moment of the collision. The vehicles could not have instantly stopped dead upon impact, but the heavier vehicle must by its greater momentum have pushed the lighter one backwards.

Car as shown in the sketch plan could afford absolutely no proof as to its position on the road immediately before or after collision. In the present case the damage to the front of the Toyota car was so extensive that it is highly incredible that it could have moved to the position as shown in the sketch plan. More importantly, the driver of the Toyota car was so severely injured that it is equally incredible that he would be in a position to manoeuvre the said car to the position as shown in the sketch plan had the collision taken place at or near the centre of the road as described by the defendant. It must also be noted that there was no one at the scene at the time of the accident except the defendant and his friend Wong. It is highly improbable that the Toyota car could have been moved to the position as shown in the sketch plan by someone least of all by the defendant and Wong. PW5 was the first person to arrive at the scene and he found the Toyota car lying in that position. The only conclusion that one can arrive at is that immediately upon impact the Toyota car must have been thrown backward and stopped at the position shown in the sketch plan.

Turning to the evidence of the defendant, one may recall that he said immediately upon impact he swerved his car to his right and shut his eyes until his car finally landed in the drain on the right half of the road. No reason was given as to why he should choose to shut his eyes immediately after the impact. Had he been the passenger in Mercedes such an assertion might perhaps be acceptable but as a driver such a behaviour is highly unnatural and irrational. It is worthy of notice that in his report lodged at the police station some four hours after the accident (the English translation of which is included in Exhibit 'A') he said that when he reached (the place where the accident occured) a car came the opposite direction in an unsteady manner, encroached on to his path and thus he collided on to the said car. His car (then) went into a drain on the right side of the road. In answer to questions posed to him by Counsel for the plaintiffs, he said that he did mention in his report about the Toyota car encroaching on to his path but he did not give detail of how the accident happened. The policeman who took it down could not understand him because as stated by him in examination-in-chief, he used broken Bahasa Malaysia to lodge the report. But at the early stage of the cross-examination he said that as a driving instructor he had some Malay students and he could converse with them in Malay. In my scrutiny of this part of his evidence, I have two observations to make. Firstly, if he could competently instruct his Malay students by using the normal and kampong Malay language I cannot understand why he should have any difficulty in saying what he really wanted to say in Malay to the policeman when he lodged the report. Secondly although I cannot except him to give a detailed account of how the accident occured nevertheless he should mention the material facts in his report. His failure to mention that after encroaching on to his path the Toyota car proceeded to the sidetable or edge of the road before turning round to collide with his car is an element which I cannot ignore in my evaluation of the totality of the evidence in the present case.

I now come to the evidence of DW2 the passenger in the Mercedes car. Bearing in mind that the accident happened some nine years ago and the denial made by this witness that he had discussed this accident with the defendant before he gave his evidence, it is amazing that he could relate to this Court the exact time the defendant arrived to fetch him for the trip to Ipoh, the exact time they arrived at Serendah, the exact time they left Serendah and the speed of the Mercedes car, all of which were, the same as what the defendant had said in his evidence. It is equally amazing that he could recapitulate the events that took place prior to and at the time of the accident with such ease and without having to take time to think. From my observation of the quality of his evidence and the way he gave it, I have no doubt that the two witnesses for the defence had an understanding of a sort resulting in DW2 repeating the defendant's assertions verbatim. I therefore cannot give much value to his evidence.

Upon the ultimate analysis of the evidence as a whole, I am of the view that the defendant had encroached on to the wrong side of the road and this led to a head-on collision with the Toyota car. Bearing in mind that both vehicles were travelling on a country road where there was no speed limit, there is no doubt that both the vehicles were travelling at a fast speed. This proposition is supported by the extent of the damages sustained by both the vehicles more particularly by the Toyota car. That being the case, the collision must have occured a few seconds after the encroachment of the defendant and the impact was so great that the Toyota car was pushed back on to the position as shown in the sketch plan. Under such circumstances the question of contributory negligence does not arise as the defendant has no right to complain when it was he who placed the driver of the Toyota car in the agony of a collision whereby the latter had no time to take any reasonable step to prevent the collision. I therefore held that the defendant is wholly liable.

I shall now turn to the assessment of damages. From the statement of claim the reliefs relating to damages sought are:

(1) Special damages comprising costs of taking out letters of administration to administer the estate of each of the deceased and funeral expenses.

(2) Damages on behalf of the estate of each of the deceased for lost years under s. 8 of the Civil Law Act 1956.

(3) Damages for loss of expectation of life for each of the deceased and

(4) Interest.

The claim for damages on behalf of the defendants of the three deceased under s. 7 of the said Act has been abandoned.

Special damages for the estate of each deceased have been agreed in the sum of RM1,250.

For the lost years claim the parties have also agreed that the monthly earnings of:

(a) Zainol Abidin bin Pandak Audin (first deceased) were RM1055;

(b) Ahmad bin Jai (second deceased) were RM502; and

(c) Abu Bakar bin Chin (third deceased) were RM680.

It has been judicially accepted that a claim for damages for the lost years can only succeed if the following two conditions have been satisfactorily established:

(i) there must exist on the evidence presented to the Court a pre-accident income of the deceased; and

(ii) from this income there must be a monetary sum which the deceased would have been able to save after the deduction of an estimated sum to represent his probable living expenses.

The aforesaid conditions advocated in *Pickett v. British Rail Engineering Ltd.* [1979] 1 All ER 774 was adopted by our Courts - see *Thangavelu v. Chia Kok Bin* [1981] CLJ (Rep) 281 and *Low Kok Tong v. Teo Chan Pan* [1982] CLJ (Rep) 869. In the present case there is no difficulty as regards to the first condition since the parties have agreed that each of the deceased was earning the monthly income as set out earlier. As to the second condition, the evidence adduced to support the probable living expenses of each of the deceased is this. The widow of the first deceased (PW1) said that her late husband used to give her

RM400. The monthly rental of the house where they resided was RM65. The first deceased sometimes went for 'outings'. The widow of the second deceased (PW2) said that prior to her husband's death she was given RM300 p.m. for household expenses. They too stayed in a rented house and the monthly rental was RM70. The father of the third deceased said that he received RM300 monthly from his son. I must say that to assess the living expenses on such meagre evidence is extremely difficult. However that may be I cannot shun from assessing the damages under this head bearing in mind that although "the assessment of living expenses may no doubt sometimes present difficulties but certainly no difficulties which would be insuperable for the Courts to resolve" (per judgment of Lord Salmon in the *Pickett's* case).

Counsel for the defendant suggested that I should adopt the approach advocated by Thean J in *Chan Heng Wah v. Peh Thiam Choh* [1988] 1 MLJ 74. In that case the learned Judge followed the English cases and took a percentage (40%) of the net prospective earnings of the deceased victim as the available surplus on which the assessment for the lost years was made. Counsel for the defence in the present case therefore suggested that I too should take 40% of the net prospective earnings of each of the deceased to assess the damages under this head. With respect, I think the suggested percentage is arbitrarily drawn and I am not prepared to accede to such a suggestion. In any case Thean J in the *Chang Heng Wah's* case said:

> These percentage are a good guide to us but obviously cannot be followed rigidly.

It is more preferable to follow the guide line proffered by Lord Scarman in *Gammell v. Wilson* [1982] AC 27 at p. 78 where he said:

> The loss to the estate is what the deceased would have been likely to have available to save, spend, or distribute after meeting the cost of his living at a standard which his job and career prospects at time of death would suggest he was reasonably likely to achieve. Subtle mathematical calculations based as they must be on events or contingencies of a life which he will not live, are out of place: the Judge must make the best estimate based on the known facts and his prospects at time of death.

I must also bear in mind that the ingredients that go to make up living expenses are the same whether the victim be young or old, single or married with or without dependents. The sum to be deducted as living expenses is the proportion of the victim's net earnings which he spends to maintain himself at the standard of life appropriate to his case and any sums expended to maintain for the benefit of others do not form part of the victims living expenses and are not to be deducted from the net earnings - per judgment of O'Connor LJ in *Harris v. Empress Motors Ltd.* [1984] 1 WLR 212 at p. 228. It is with this attitude that I now proceed to assess the damages under this head.

Doing the best I can my assessments are as follows:

With regards to the first deceased, he was a postal clerk and had a steady income of RM1055 p.m. To be able to give his wife a sum of RM400 and live in a rented a house for which he paid a monthly rental of RM65, it would appear to me that his living expenses were relatively modest. However I must in assessing his living expenses, take into consideration the cost of his housing, food, clothing, travelling expenses and a modest amount of entertainment and social activity. The total cost of all these items in my view could not be more than RM400 p.m. The quantum of his net 'savings' is therefore RM655 which I will round it up to RM600 p.m. I will give 11 years' purchase (which both Counsel has agreed to be a reasonable figure). My award under this head according to the annuity table is therefore RM59,807 (round figure).

As to the second deceased, he was a postman drawing a steady income of RM502 p.m. out of which he gave his wife a monthly allowance of RM300 towards household expenses. The monthly allowance which he gave to his wife is likewise indicative that he was not a spendthrift and he lived within his means. Taking into account the same items in respect of his living expenses as I have done in the case of the first deceased and taking into consideration that he was only a postman and would unlikely be involved in extravagant entertainment and social activities, I think his living expenses could not be more than RM250 p.m. This will leave his available surplus in the sum of RM250 p.m. (round figure). With a multiple of 16 as agreed the award under this head pursuant to the annuity table is RM32,513 (rounded up).

The third deceased was also a postal clerk drawing a steady salary of RM680 p.m. He appeared to be a bachelor but he gave to his father between RM300 to RM500 per month. His father may well have exagerrated as to the allowance given to him by his son, nevertheless his unchallenged assertion is indicative that the living expenses of the third deceased were also quite modest. However as a bachelor his entertainment and social activities would cut more deeply into his net income. My assessment of his living expenses is therefore RM380 p.m. leaving RM400 as the available surplus. With the agreed multiplier of 15 the award I give is RM49,822 (round figure).

The claim for loss of expectation of life the conventional award of RM5000 is a reasonable sum for each of the deceased person.

As regards to interest I allow interest at the rate of 4% p.a. respect of the special damages from the date of the accident till date of judgment and thereafter the interest will be at 8% p.a. until realisation.

Costs of the proceedings are to be paid by the defendant to the plaintiffs.

Also found at [1990] 1 CLJ 943